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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,446	04/26/2001	Loren Christensen	33557	7551
116	7590	08/24/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			RAYYAN, SUSAN F	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,446

Applicant(s)

CHRISTENSEN, LOREN

Examiner

Susan F. Rayyan

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

DETAILED ACTION

1. Amendment filed on June 6, 2005 has been considered.
2. Claims 1-19 are pending.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The use of the phrase "data hunk" is unclear as the specification does not include a definition to explain exactly what Applicant considers a data hunk. (p. 5, lines 3-5, data hunks are imported).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baru et al (US 5,970,495) and Muthukrishnan et al (US 6,065,007).**

As per claims 1,7,14 Baru teaches:

receiving collected data objects from at least one data collection node using at least one performance monitoring computer whereby a distributed database is created at col.7, lines 1-33;

partitioning the distributed database into data hunks using ... a running on at least one performance monitoring server computer at col. 7, lines 32-34;

importing the data hunks into a plurality of delegated database engine instances located on at least one performance monitoring server computer so as to parallel

process the data hunks whereby processed data is generated at col7, lines 34-46;

accessing the processed data using at least one performance client computer to monitor data object performance at col.7, lines 1-6.

Baru does not explicitly teach histogram routine running on at least one performance monitoring server computer such that the data hunk substantially has a target partition size. Muthukrishnan teaches this at col6, lines 65, bridging to, col.7, and line 12. It would have been obvious to one of ordinary skill in the art to combine Muthukrishnan with Baru to reduce the amount of memory space to store data at co.1, lines 16-18.

As per claims 2,8,15 same as claim arguments above and Baru teaches:

at least one database engine instance is located on the performance monitor server computers on a ratio of one engine instance to one central processing unit whereby the total number of engine wherein instances is at least two so as to enable the parallel processing of the distributed database at col.4, lines 60-64.

As per claims 3,9,16 same as claim arguments above and Baru teaches:  
wherein at least one database engine instance is used to maintain a versioned master vector table at col.7, lines 27-41.

As per claims 4,10,17 same as claim arguments above and Baru teaches:  
wherein the versioned master vector table generates a ...routine used to facilitate the partitioning of the distributed database at col.7, lines 27-41.

As per claims 5,11,18 same as claim arguments above and Baru teaches:  
dividing the total number of active object identifiers by the desired number of partitions so as to establish the optimum number of objects per partition;  
generating an n point histogram of desired granularity from the active indices; summing adjacent histogram routine generated values until a target partition size is reached but not exceeded at col.5, lines 33042 and col 7, lines 27-41, Razdow teaches these limitations in a manner similar to the Applicants claim language.

As per claims 6,12,19 same as claim arguments above and Baru teaches:  
wherein the performance monitor server comprises an application programming interface compliant with a standard relational database query language at col. 4, lines 10-25.

As per claim 13 same as claim arguments above and Baru teaches:  
wherein at least one performance monitor client computer is connected to the network so as to communicate remotely with the performance monitor server computers at fig.2.

***Response to Arguments***

7. Applicant's arguments, see amendment p. 9, filed on June 6, 2005, with respect to the rejection(s) of claim(s) 1-19 under 35 U.S.C. 103(a) as being unpatentable over Baru et al (US 5,970,495) and Razdow et al (US 6,330,008) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art Muthukrishnan et al (US 6,065,007). See above rejection.

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.


Applicant argues prior art of record fails to teach histogram routine running on at least one performance monitoring server computer such that the data hunk substantially has a target partition size. Muthukrishnan teaches this at col6, lines 65, bridging to, col.7, line 12. It would have been obvious to one of ordinary skill in the art to combine. Muthukrishnan with Baru to reduce the amount of memory space to store data at co.1, lines 16-18.

**Contact Information**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan F. Rayyan whose telephone number is 571-272-4117. The examiner can normally be reached on M, T, H (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Susan Rayyan  
August 21, 2005

  
**MOHAMMAD ALI**  
**PRIMARY EXAMINER**